

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
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)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF
THE PUERTO RICO TELEPHONE COMPANY, INC.**

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January 14, 2004

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Puerto Rico Telephone Company, Inc. ("PRT"), pursuant to Section 1.429 of the Federal Communications Commission's ("FCC" or "Commission") Rules, 47 C.F.R. § 1.429, respectfully urges the Commission to clarify and/or reconsider several portions of its *Remand Order*.¹ That *Order* responded to the Tenth Circuit's demand for further information about the workings of the non-rural high cost mechanism and the universal service fund generally. The Commission also responded to a Petition for Reconsideration² filed by PRT challenging certain aspects of the *Ninth and Tenth Reports and Orders*³ and the continued failure of the FCC to provide support for insular areas.

The FCC apparently misread PRT's *Petition*, and in doing so made a number of observations about the specific challenges facing insular areas. PRT has serious concerns about

1 *Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-249 (Oct. 27, 2003) ("*Remand Order*").

2 *Federal-State Joint Board on Universal Service; Forward Looking Mechanism for High Cost Support for Non-Rural LECs*, Petition for Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45 (Jan. 3, 2000) ("*Petition*").

3 *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"); *Federal-State Joint Board on Universal Service*, Tenth Report and Order, 14 FCC Rcd 20156 (1999) ("*Tenth Report and Order*").

the observations made, rationales used, and the types of federal support suggested by the FCC - all of which are inconsistent with prior FCC findings. PRT, therefore, seeks clarification of the *Remand Order*, or reconsideration, if deemed necessary, to revisit these issues in anticipation of the FCC's prompt consideration of PRT's long-standing call for a non-rural insular high-cost support mechanism.

Specifically, the FCC should first clarify that a key objective of its high-cost program is to ensure the affordability of rates. Second, the FCC should explain that the high-cost program works in conjunction with other universal service programs. Third, the FCC should reexamine the appropriateness of applying its high-cost Synthesis Model to insular areas, like Puerto Rico. Lastly, the FCC should take this opportunity to adopt a non-rural insular high-cost support mechanism based on insular carriers' actual costs.

I. EXECUTIVE SUMMARY AND INTRODUCTION: PRT HAS CONSISTENTLY REQUESTED THE CREATION OF AN INSULAR SPECIFIC MECHANISM

The Commission is obligated by the Communications Act of 1934, as amended, ("the Act") to establish a mechanism for the distribution of universal service support to insular areas. Eight years after the Telecommunications Act of 1996, this obligation remains unfulfilled. The continued lack of high-cost support to the people of Puerto Rico is flatly inconsistent with the Act's mandate. The *Petition* was part of PRT's concerted efforts to effectuate the promise of the Act to benefit insular areas.

Yet the Commission suggests that PRT only sought to be "treated as rural" – the same request that was rejected in the *First Report and Order*.⁴ The FCC thus relied heavily on its prior disposition of that request. However, the FCC failed to address other portions of PRT's *Petition*

⁴ *Remand Order*, ¶¶ 138-139; see also *Federal-State Joint Board On Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 315 (1997) ("*First Report and Order*").

and avoided any reference to the specific mandate of Section 254 to provide support for insular areas. In its *Petition*, PRT also questioned the application of the Synthesis Model to Puerto Rico; asserted that the *Ninth and Tenth Reports and Orders* failed to produce sufficient universal service support for Puerto Rico; proposed specific revisions to the Synthesis Model and non-rural methodology; and reasserted that insular carriers should be provided for based on actual costs.

PRT recognizes that the *Remand Order*'s consideration of PRT's *Petition* was on the narrowest of issues, and explicitly did not address PRT's more fundamental request to provide for an explicit insular support mechanism.⁵ To that end, PRT is encouraged that the FCC also acknowledged the need to consider separately its more fundamental request, and hopes that the FCC acts swiftly on that request.⁶ PRT also wishes to clarify that this request was not first presented in June 2003, as the FCC implied in the *Remand Order*.⁷ The June 2003 request was

5 *Remand Order*, ¶ 139 (“We note that we do not address here Puerto Rico Tel. Co’s request in an *ex parte* letter, filed on June 6, 2003, that the Commission create a separate category of ‘non-rural’ insular carriers for purposes of interstate high-cost support.”).

6 Implementation of PRT’s request does not require the opening of a new proceeding or an additional referral to the Joint Board. The Joint Board has already acknowledged the unique needs of insular areas and has recommended that the Commission further investigate areas with low penetration rates like Puerto Rico. In 1996 the Commission asked the Joint Board to “prepare recommendations regarding the best means of establishing a new universal service support mechanism for rural, insular, and high-costs areas.” *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092, 18112 (1996). After thoroughly examining these issues, the Joint Board “recognize[d] the special circumstances faced by carriers and consumers in the insular areas of the United States.” *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87308 (1996) (“*First Recommended Decision*”). The Joint Board made recommendations regarding the continued use of embedded costs for certain insular carriers, and also “recommended that the Commission work with an affected state if subscribership levels in that state fall from the current levels.” *Id.*, ¶ 184. The latter recommendation resulted in the 1999 Unserved and Underserved Notice of Proposed Rulemaking, the insular portion of which remains pending. *Federal State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 (1999) (“*Underserved NPRM*”).

7 *Remand Order*, ¶ 139.

only the most recent iteration of that request. Among PRT's unacted upon requests are the following:

Reconsideration of the First Report and Order. PRT sought reconsideration of the *First Report and Order* in 1997, asserting that the Commission failed to meet its statutory burden of making universal service available to all insular areas. PRT specifically alleged that the Commission significantly diverged from the plain language of the Act by “limit[ing] its obligation to ensure universal service support to rural and high-cost areas and low-income consumers,” effectively reading out Congress’ direction regarding insular areas.⁸ In 2001, PRT filed Comments updating its Petition for Reconsideration of the *First Report and Order*,⁹ restating its belief that the Commission should reconsider its failure to establish sufficient universal service for insular areas.¹⁰ The Commission has never acted upon this Petition for Reconsideration of the *First Report and Order*.

2000 Insular Areas Order. In 1999, the Commission initiated a proceeding to consider deployment and subscribership in underserved regions, including insular areas.¹¹ In response, PRT reasserted its position that the Commission should continue to provide support to insular carriers based on embedded costs until a new methodology is established that is capable of

8 Petition for Reconsideration of the Puerto Rico Telephone Company, CC Docket No. 96-45, 4 (July 17, 1997).

9 Comments of Puerto Rico Telephone Company, Updating Petition for Reconsideration of First Report and Order, CC Docket No. 96-45 (Aug. 20, 2001) (“*Update Comments*”).

10 *Id.*, at 1, 10.

11 *Underserved NPRM*, ¶ 9.

accurately predicting the costs associated with providing service in an insular area.¹² The Commission declined to adopt any changes to the universal service support system for insular areas, but did commit itself to addressing the causes of low subscribership in insular areas, in a future proceeding.¹³ The Commission has not yet done so.

II. PRT FACES UNIQUE CHALLENGES SERVING PUERTO RICO, A NON-RURAL INSULAR AREA

PRT is the incumbent provider of basic telecommunications service to the whole of Puerto Rico – both rural and non-rural areas. Based solely upon the relative size of Puerto Rico’s study areas, PRT is classified as a non-rural carrier for purposes of universal service support. Yet over half of Puerto Rico meets the definition of rural according to the Census Bureau.

PRT operates under severe operational conditions. PRT faces significant difficulties inherent in serving an insular area, difficulties the FCC has readily acknowledged in the past: “insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”¹⁴ The FCC’s Rural Task Force further detailed the significant challenges facing insular areas. In its *First White Paper*, the Task Force found that “[i]nsular areas not only have unique and higher cost characteristics than most other carriers because they are surrounded by hundreds of miles of ocean with unique weather patterns and topography, but

12 Reply Comments of Puerto Rico Telephone Company, CC Docket No. 96-45, 2-3 (Jan. 19, 2000).

13 *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12,208, ¶¶ 11, 32-33 (2000) (“*Underserved Order*”).

14 *First Report and Order*, ¶ 112.

also have lower penetration rates and lower incomes than most of the U.S. mainland.”¹⁵ The conditions on Puerto Rico mirror those in the Rural Task Force’s observations.

The difficulties inherent in providing service to Puerto Rico is most clearly evidenced by Puerto Rico’s 71.2 percent telephone subscribership rate,¹⁶ severely below the national average of 95.5 percent.¹⁷ Even more troubling is that telephone subscribership in Puerto Rico’s rural communities is well below Puerto Rico’s overall subscribership rate. While some urban areas are able to maintain subscribership levels close to mainland levels (86.1 percent in Pueblo Viejo), many areas, particularly in the mountainous interior, have penetration rates of 60 percent or less.¹⁸ The map attached as Exhibit A illustrates the range of penetration rates throughout the island.

Puerto Rico’s low telephone penetration rate can be attributed to the inherent costs of serving an insular area; a dispersed population; and the overall economic conditions facing the average Puerto Rico consumer. It is important to recognize that some consumers do not subscribe because they cannot subscribe – in some remote communities, no telecommunications infrastructure exists at all. Unlike mainland carriers, PRT is still in the process of building out facilities to serve all of its territories – an expensive and daunting task.

PRT faces distinct challenges in serving Puerto Rico because it is an island. For example, equipment and supplies must be shipped to the island, at great expense. This significantly increases infrastructure costs and requires PRT to maintain a larger than necessary

15 Rural Task Force, *White Paper I*, 14-15 (Sept. 1999) (“*White Paper I*”).

16 *Update Comments* at 5.

17 Telephone Subscribership in the United States, (rel. Nov. 8, 2002), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs0302.pdf.

18 Consider the penetration rates for the following municipalities: Aguirre 49 percent; Manunabo 56.7 percent; Guanica 52.3 percent; Las Marias 56.7 percent. *See* Exhibit A.

inventory of supplies and repair parts. Water-based erosion and unpredictable terrain further complicate operations and escalate costs. PRT also must overcome the exorbitant and uncertain costs of operating in the Caribbean’s “Hurricane Alley;” Puerto Rico annually faces devastating damage from severe hurricanes and tropical storms.¹⁹

Puerto Rico’s sparsely populated mountainous rural interior further drives up PRT’s cost of service.²⁰ PRT must surmount considerable physical obstacles, at substantial cost, to install and maintain facilities in this terrain.²¹ The Rural Task Force correctly noted that “geographic isolation of these areas contributes significantly to the higher comparative cost to build and maintain telephone plant. The movement of materials, manpower and equipment into these areas can significantly increase initial construction, as well as ongoing operational costs.”²² For example, the cost per local loop to install wireline service in these areas ranges from \$5,000 to more than \$15,000 in some instances.²³

In the *First Report and Order* and again in the *Remand Order*, the FCC asserts that PRT “*should* possess economies of scale and scope to deal effectively with the cost of providing service in their areas.”²⁴ Without any apparent factual basis, the FCC has determined that large insular carriers (a class of one – PRT) should receive support under the general high-cost

19 Comments of Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, 7-8 (Dec. 17, 1999) (“*PRT Insular Comments*”). For example, in 1999, Hurricane Georges caused more than \$80 million in damages to PRT facilities.

20 *Id.* at 4-5.

21 *Id.* at 7.

22 See Rural Task Force, *Rural Difference: White Paper 2*, 27 (Jan. 2000).

23 Comments of Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, 7 (Dec. 1, 1999).

24 *Remand Order*, ¶ 139 (emphasis added).

mechanism because the relative size of the carrier *should* compensate for any insular-related costs. Tellingly, the FCC still has never found, or asserted, whether PRT actually *does* possess such economies of scale and scope. PRT has repeatedly demonstrated that there is no basis for this distinction - the size of an insular carrier's operations cannot compensate for the inherent costs and characteristics of serving an insular area. Further, PRT lacks the economies of scale and scope attributed to it because of Puerto Rico's high service costs and low subscribership levels.²⁵

The FCC has not yet established a universal service mechanism for insular areas.

Compounding the obstacles to providing service in Puerto Rico, PRT and Puerto Rico still await the adoption of an insular high-cost support mechanism. Section 254(b)(3) requires the FCC to address the unique needs of insular areas, providing that consumers "in rural, *insular*, and high cost areas, should have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas."²⁶ Without question, Puerto Rico is an "insular" area within the meaning of this provision.²⁷ Under basic principles of statutory construction, the Commission must establish a universal service

25 These operational challenges are exacerbated by the economic realities of Puerto Rico. The cost of living in Puerto Rico is considerably higher than the national average, yet average annual incomes on the island are considerably lower, only \$8,000. *PRT Insular Comments* at 9-10. (noting that the increased costs associated with living on an island are reflected in Puerto Rico's 133.8 cost of living index, which is much higher than the national average of 100). The high cost of living and low average incomes result in a strikingly high percentage of Puerto Rico's population living below the poverty rate - 55 percent. *Update Comments* at 5. Within these demographics, phone service is much more of a luxury good than it is anywhere on the mainland. In fact, only twenty years ago, the penetration rate in Puerto Rico was only approximately 25 percent.

26 47 U.S.C. § 254(b)(3) (emphasis added).

27 See, e.g., *Underserved NPRM*, ¶¶ 135, 138 (tentatively concluding that Puerto Rico is an insular area, and expressing concern "about the low subscribership levels in insular areas, including Puerto Rico").

mechanism for insular areas separate and apart from that provided for rural and high-cost areas.²⁸

In doing so, the FCC ignores the Rural Task Force's conclusion that "the Commission's USF methodology should afford special treatment to insular carriers."²⁹ The need to implement the Act's mandate is underscored by the inability of the FCC's current support mechanisms to provide Puerto Rico the statutorily required reasonably comparable and affordable rates.

Although the Commission has adopted a rural high-cost mechanism and a general high-cost mechanism (non-rural), the FCC has never provided for insular-specific support. As a practical matter, insular areas only receive support if those areas also happen to be rural. Because of its non-rural status and the current lack of an insular mechanism, PRT is only eligible to receive high-cost loop support through the FCC's general high-cost support Synthesis Model. As explained in Section IV, the Synthesis Model is not effective at achieving the Act's goal of providing affordable and reasonably comparable rates to customers in Puerto Rico. PRT is the only high-cost insular carrier subject to the vagaries of that mainland-based Model, and application of the Model to PRT has eliminated *all* high-cost loop support for Puerto Rico, approximately \$50 million.³⁰ PRT's ability to invest in infrastructure improvements and to guarantee affordable rates has been seriously hindered because of the elimination of high-cost support.

28 *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (noting that it is a "duty 'to give effect, if possible, to every clause and word of a statute'").

29 Rural Task Force, *White Paper 1*, 14-15 (Sept. 1999).

30 PRT continues to receive a minimal amount of hold harmless support, approximately \$2.9 million for 2003.

III. AFFORDABILITY IS A PRIMARY OBJECTIVE OF THE HIGH-COST SUPPORT PROGRAM

In rejecting PRT's *Petition*, the Commission asserted that the sole aim of the high-cost support fund is to ensure reasonable comparability of rates.³¹ This appears to be a departure from the original objectives of the high-cost program: to provide *both* affordable and reasonably comparable rates. The Commission provided no justification for this apparent departure, and PRT requests clarification or reconsideration as to the proper objectives of the high-cost program. This correction is particularly important for PRT because Puerto Rico needs high-cost support to ensure the affordability of its rates as well as to maintain the reasonable comparability of its rates.

In the *Ninth Report and Order*, the FCC adopted a “mechanism that will provide sufficient support to enable *affordable*, reasonably comparable intrastate rates for customers served by non-rural carriers.”³² These same dual purposes were echoed in the *Seventh Report and Order* in which the FCC recognized that the “primary focus in reforming the federal high-cost universal service support mechanism is to enable intrastate rates to remain both *affordable* and reasonably comparable.”³³ The Commission, however, now suggests that “federal high-cost support is not the appropriate federal program for addressing issues of affordability and subscribership.”³⁴ The FCC bases this view on a single sentence in the *Seventh Report and Order* suggesting that “affordability problems, *as they relate to low-income consumers*, raise

31 *Remand Order*, ¶ 140 (holding that “the purpose of non-rural high-cost support is to ensure reasonable comparability of rates among states”).

32 *Ninth Report and Order*, ¶ 34 (emphasis added).

33 *Federal State Joint Board on Universal Service; Access Charge Reform*, Seventh Report and Order, 14 FCC Rcd 8078, ¶ 28 (1999) (“*Seventh Report and Order*”) (emphasis added).

34 *Remand Order*, ¶ 140.

many issues that are unrelated to the need for support in high-cost areas.”³⁵ PRT agrees that low-income support can resolve many affordability issues vis-à-vis low-income consumers, but affordability problems that cross all income classes must be (and have been) addressed by the high-cost support mechanism. The low-income programs alone cannot remedy such fundamental concerns. In addition, low-income support cannot address network coverage issues where areas of customers cannot be reached because of the unavailability of facilities.³⁶

The need for both objectives is unmistakable. Affordability of rates is central to the Act’s mandate, and the chosen means to ensure that goal is high-cost support. PRT has long agreed with that position, stressing the “linkage between federal high-cost support, affordability, and network investment.”³⁷ Further, it is axiomatic that the relative range of rates is irrelevant in a state that lacks *any* affordable rates.³⁸

Nonetheless, the Commission’s current focus on reasonable comparability is to be expected. In 1996, the Commission asked if it was “appropriate to assume that current rates for

35 *Seventh Report and Order*, ¶ 39 (emphasis added).

36 Joint Board Member Nanette Thompson, Alaska PUC Commissioner, suggested that the “expense for providers is in building the network. ‘It’s not a question of affordability of service, but of the cost to provide the service.’” *Communications Daily*, Wireline, 2003 WL 5756486 (Sept. 29, 2003).

37 Comments of Puerto Rico Telephone Company, CC Docket No. 96-45, 3 (July 23, 1999) (“*July 1999 Comments*”).

38 The Commission’s apparent aim to target non-rural high-cost support mechanism for the reasonable comparability of rates only underscores the inappropriateness of the mechanism for PRT and Puerto Rico. The non-rural mechanism works effectively for the mainland carriers it was designed to support – carriers serving relatively high-cost areas with service to over 90 percent of their population. The FCC’s reliance on mainland assumptions and mainland data is symptomatic of the larger problem of attempting to apply mainland rules to insular areas, areas that were explicitly singled out by Congress for special treatment because mainland solutions are neither effective nor appropriate.

services included within the [definition of] universal service are affordable.”³⁹ The Commission has worked under that assumption ever since. The Joint Board and the Commission has repeatedly affirmed that rates are generally affordable based in large part on national penetration rates.⁴⁰ The Joint Board in the *Second Recommended Decision* explained that because “rates generally are affordable” its analysis would “focus a greater degree ... on the issue of reasonable comparability.”⁴¹

That focus was heightened further by the *Qwest* decision, in which the Tenth Circuit ordered the FCC to provide more precise definitions of “reasonably comparable” and “sufficient.”⁴² In the *Remand Order*, it appears that the Joint Board’s greater focus has now transformed into the complete exclusion of affordability. While nationwide average rates may be affordable, all rates throughout the nation are not.⁴³ The FCC relied on the GAO Report to

39 *Common Carrier Bureau Seeks Further Comment on Specific Questions in Universal Service Notice of Proposed Rulemaking*, Public Notice, CC Docket No. 96-45, Question One (July 3, 1996) (“1996 USF Questions”).

40 *Seventh Report and Order*, ¶ 38; *Universal Service Monitoring Report*, CC Docket No. 98-202, (Dec. 22, 2003) (“*Monitoring Report*”); *Remand Order*, ¶ 29 (noting the “current affordable levels” of rates).

41 *Federal-State Joint Board on Universal Service*, *Second Recommended Decision*, CC Docket No. 96-45, ¶ 3 (Nov. 25, 1998).

42 *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

43 PRT’s current revenues are not sufficient to ensure the affordability of rates and support needed infrastructure investment. Nor can PRT simply increase rates, given the already low penetration rate in Puerto Rico. Any rate increases would have to be spread over a relatively small number of customers, potentially causing subscribership levels to plummet further. Intrastate universal service funds are not an additional source of support. As the Joint Board has recognized, this option is not viable in all states; and Puerto Rico is a prime example. *First Recommended Decision*, ¶ 25. There are not enough carriers in Puerto Rico to generate enough internal revenues to create a sufficient intrastate universal service fund.

establish the reasonable comparability and affordability of rates, yet that Report was not comprehensive - it did not include any Puerto Rico data.

The Commission must revisit the *Remand Order* and the PRT's *Petition* in light of the twin goals of the high-cost program. The FCC rejected PRT's *Petition* because it was "not persuaded that providing more high-cost support ... would effectively address the underlying concern ... low subscribership levels."⁴⁴ Low subscribership levels are directly relevant to the Commission's ongoing responsibility to provide sufficient support and to guarantee affordable rates. The FCC has repeatedly acknowledged the nexus between subscribership, sufficiency, and affordability. In the *First Report and Order*, the Commission concluded that "subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates."⁴⁵ The Joint Board, in its *First Recommended Decision*, also found "a general correlation between subscribership level and affordability."⁴⁶ In its *Remand Order*, the FCC continued to link subscribership with affordability and sufficiency, basing its conclusion that "the federal high-cost support system has proved sufficient to preserve and advance universal service" on the fact that "[l]ocal telephone service subscribership is currently at 95.3%."⁴⁷ Thus, the Commission has consistently maintained that high penetration rates are conclusive proof that rates are affordable.

If so, the inverse must be true, or at least probative. Puerto Rico's dangerously low subscribership certainly suggests that its rates may not be affordable and that PRT's universal

44 *Remand Order*, ¶ 140.

45 *First Report and Order*, ¶ 112.

46 *First Recommended Decision*, ¶ 127.

47 *Remand Order*, ¶ 105.

service support is insufficient. At a minimum, Puerto Rico on reconsideration deserves a more searching analysis of the challenges facing Puerto Rico (and insular areas generally) and the best combination of available support to remedy these challenges. Such review is particularly appropriate in light of the congressional mandate to support insular areas and guarantee affordable rates.

IV. THE COMMISSION DID NOT ADDRESS PRT'S SPECIFIC PROBLEMS WITH THE NINTH AND TENTH REPORTS AND ORDERS' METHODOLOGY AND MODEL

In its *Petition*, PRT demonstrated that the FCC's Synthesis Model could not properly reflect Puerto Rico's costs. Yet based upon "the reasons discussed above," the Commission rejected PRT's concerns out-of-hand, asserting that the methodology adopted in the *Ninth Report and Order* was proper, and that the Synthesis Model was adequate. The Commission failed to address any of the stated problems with the Model or the Model's impact on Puerto Rico, relying instead on national conditions. Because PRT's *Petition* was not one of general applicability, the fact that as a matter of national policy the Synthesis Model works is beside the point. PRT has long warned that "local exchange carriers in insular areas are likely to experience cost factors that are difficult to incorporate in a proxy cost model."⁴⁸

Flaws in the Synthesis Model. The Model was at least initially designed with mainland assumptions and mainland viewpoints. The Commission openly asked "[h]ow should support be calculated for those areas (e.g., insular areas and Alaska) that are not included under the proxy

⁴⁸ Comments of Puerto Rico Telephone Company, CC Docket No. 96-45, iii (Dec. 19, 1996) ("*PRT 1996 Comments*").

model.”⁴⁹ In fact, insular costs and characteristics were never properly built into the Model. Simply plugging Puerto Rico data into a mainland formula produces illogical effects.

The intrinsic difficulties of serving insular areas as described in detail above – issues with geography, demographics, and climate – effectively prevent a general proxy cost Model from accurately reflecting the cost structure of serving an island. The Joint Board has recognized that “while we believe that proxy Models may provide an appropriate determination of costs on which to base high-cost support, we are less certain that they may do so for rural carriers in Alaska and insular areas.”⁵⁰

The inappropriateness of the Synthesis Model for insular areas is reflected in the Model’s reliance on mainland data and mainland assumptions as to the availability of data. As a result, insular areas may lack the requisite data to populate the Synthesis Model. For instance, in building the Model, the Commission explained that “[o]utside plant, or loop plant ... constitutes the largest portion of total network investment” and that “the design of outside plant facilities depends heavily on the location of customers relative to the wire center.”⁵¹ The Commission readily acknowledged that “the most significant portions of network costs will be determined using the model’s customer location module.”⁵² The Commission went on to find that “the most accurate data for locating customers within wire centers are precise latitude and longitude

49 *1996 USF Questions*, Question 41.

50 *First Recommended Decision*, ¶ 298.

51 *Federal-State Joint Board on Universal Service*, Fifth Report and Order, 13 FCC Rcd 21323, ¶ 27 (1998) (“*Fifth Report and Order*”).

52 *Id.*

coordinates for those customers' locations.”⁵³ However, Puerto Rico and PRT lack access to such data. The FCC has ignored that, unlike the mainland, “Puerto Rico does not have a systemic addressing system ... [a customer’s] address is not likely to have any relationship with the location of the addressee.”⁵⁴

The Synthesis Model’s basic assumptions are also flawed. PRT has consistently complained that the Model’s emphasis on line density and population density as a primary determinant of loop costs and access lines produces inaccurate results for Puerto Rico.⁵⁵ Because the low penetration in Puerto Rico deprives PRT of the economies of scale that are assumed by the Model, the end result is that the Model’s loop costs and line counts are greatly exaggerated. In its *Petition*, PRT explained that the Synthesis Model underestimated Puerto Rico’s monthly loop costs by almost \$10 (\$27.89 to \$37.23).⁵⁶ Similarly, PRT reported to the FCC that the models predicted “the existence of 415,000 ... more access lines in Puerto Rico than actually exist, thereby overestimating the individual line count by more than 37 percent.”⁵⁷ The FCC has never responded to these specific concerns regarding the Synthesis Model, the Model’s respective inputs, and the Model’s application to insular areas.

53 *Id.*, ¶ 33.

54 Comments of Puerto Rico Telephone Company, CC Docket No. 96-45, 3-4 (June 1, 1998); *see also* Letter from Telecommunications Regulatory Board of Puerto Rico to William E. Kennard, Chairman, CC Docket No. 96-45 (May 7, 1998). The Rural Task Force recognized that while “insular Territories generally have shorter loops [they] may carry a much higher cost per foot. What Alaska and rural Territories may save in having shorter loops is more than offset by additional costs that can be attributable to their... unique factors.” *White Paper I*, at 27. The Model has not been tailored to reflect this anomalous reality.

55 Puerto Rico Presentation on Insular Areas, CC Docket No. 96-45, 3 (Sept. 13, 1996); Comments of Puerto Rico Telephone Company, CC Docket No. 96-45, 28 (Dec. 19, 1996).

56 *Petition* at 4.

57 *July 1999 Comments* at 3.

Puerto Rico's experience under the Synthesis Model substantiates PRT's concerns. The FCC need not rely on PRT's claims that the Synthesis Model will not work for insular areas; it need only look at the anomalous results for Puerto Rico under the Model. The FCC acknowledged in the *Remand Order* that PRT's high-cost support has been eliminated by the Synthesis Model, but gave it no apparent weight. It is inconceivable that Puerto Rico, with the third highest costs to provide service (behind only the Virgin Islands and Wyoming), receives *no* high-cost support – that fact alone should set off warning flags that should be investigated.⁵⁸

In its *Petition*, PRT compared the results of the Synthesis Model in Puerto Rico with the results for other states. PRT discovered that states with penetration rates exceeding 95 percent received additional funds, while PRT with penetration rates below 75 percent was stripped of all support.⁵⁹ The following chart further demonstrates the facially illogical distribution of high-cost funds from 2000 to 2003:

58 *Monitoring Report*, pg. 3-28, Table 3.17.

59 PRT focused its analysis on the divergent results for Puerto Rico and Mississippi, the state with the lowest penetration rate on the mainland at the time. PRT determined that Mississippi with a penetration rate of 89.1 percent and actual costs of \$346 per loop gained \$9.00 of monthly loop support under the Model, yet Puerto Rico with far lower penetration rate and actual costs over \$100 higher than Mississippi (\$446) lost \$8.00 of monthly loop support. *Petition* at 13.

High-Cost Receipts By State, 2000 to 2003⁶⁰

State	2000 Receipts (in millions)	2003 Receipts (in millions)	Percentage Difference	Loop Costs
Puerto Rico	\$51.2	\$2.9	Down 94.4%	\$416.19
Arkansas	\$44.9	\$57.6	Up 28.3%	\$397.39
Kansas	\$37.1	\$56.2	Up 51.5%	\$330.18
Oklahoma	\$33.2	\$45.6	Up 37.3%	\$308.88
Texas	\$72.6	\$93.9	Up 29.3%	\$299.01
National	\$867.1	\$1,053.3	Up 21.5%	\$252.32

Without question, Puerto Rico was affected more dramatically by the Synthesis Model than any other jurisdiction. That impact is inextricably linked to the fact that Puerto Rico is also the *only* high-cost insular area receiving support under the Model. The outlier status of Puerto Rico has been readily recognized by disinterested parties: the New York Department of Public Service notes in December 1999 that “only two non-rural carriers serving Puerto Rico [both PRT study areas] will receive hold-harmless amounts that represent a significant portion of their estimated costs of providing universal service.”⁶¹

Further, PRT’s experience compared to other insular areas, which receive support under the rural mechanism, is telling. For instance, the Northern Marianas Islands receive \$12.70 in monthly loop support based on loop costs of \$370.68.⁶² Yet Puerto Rico, with almost \$50 greater

⁶⁰ *Monitoring Report*, pg. 3-28 (Table 3.17); pg. 3-32 (Table 3.21); pg. 3-33 (Table 3.22) Loop costs are based on the non-traffic sensitive cost and loop data collected by NECA and reported to USAC.

⁶¹ New York Department of Public Service Comments, CC Docket No. 96-45, 2 (Dec. 1, 1999)

⁶² *Monitoring Report*, pg. 3-27 (Table 3.16); pg. 3-28 (Table 3.17).

loop costs (\$416.19), receives only \$0.11 in monthly loop support under the FCC's general high-cost mechanism.⁶³

The inability of the Synthesis Model to properly account for insular costs and cost inputs as well as the Model's perverse results for insular areas, reaffirm that the Model should not be used for insular support. PRT, therefore, reiterates its request that the FCC reexamine the Synthesis Model to address the disparate impact of the Model for Puerto Rico and the inability of the Model to accurately reflect Puerto Rico costs. Such a review should be based on data and analysis specific to Puerto Rico.

V. PUERTO RICO NEEDS BOTH HIGH-COST AND LOW-INCOME SUPPORT

The Commission suggests that PRT's low subscription levels can be resolved through outreach efforts "to increase the awareness in Puerto Rico of our existing Lifeline and Link-Up programs."⁶⁴ This suggestion implies that high-cost support and low-income support are mutually exclusive support mechanisms. This is untrue. Universal service programs are designed to work hand in hand within a comprehensive support plan. PRT explained in 1997 that "available Lifeline support alone will not achieve this goal, particularly if a reduction in high-cost support causes local rates to rise."⁶⁵

On the mainland, low subscribership (approximately 90-92 percent) is typically linked to consumers at or below the poverty line. As a result, the FCC has successfully targeted its low-income support program to those individuals. Unfortunately, mainland solutions are insufficient

⁶³ *Id.*

⁶⁴ *Remand Order*, ¶ 140.

⁶⁵ Reply to Opposition to Petition for Reconsideration, Puerto Rico Telephone Company, CC Docket No. 96-45, 3-4 (Aug. 28, 1997).

in this instance because Puerto Rico's problems are much more pervasive (as demonstrated by its low subscribership levels), and extend beyond low-income individuals.⁶⁶ In fact, Puerto Rico has entire communities, particularly in the mountainous interior, without any access to the network at all. The costs of line extensions to those remote areas far exceed the low-income support available. Further, the very high cost of living in Puerto Rico coupled with low average incomes makes phone subscription a luxury item for a sizable part of the island – beyond the limited class of low-income subscribers for which low-income support is available. On top of these demographic concerns, low-income support fails to provide any support to PRT to update, maintain, or extend its network to unserved areas.

PRT applauds the Commission's efforts to expand and tailor its low-income support to tribal lands, and hopes that similar measures geared to the problems affecting insular areas will be promptly developed, as promised in 2000.⁶⁷ Regardless, PRT and Puerto Rico would welcome the additional outreach efforts to low-income individuals suggested by the FCC in the *Remand Order*. However, low-income support *in lieu of* high-cost support would be counterproductive. The continued denial of high-cost funding to Puerto Rico would force PRT to increase the costs of its basic service, thereby more than offsetting any support provided by the low-income program, and risking further drops in subscribership levels. PRT requests that the FCC clarify that its universal service programs are not mutually exclusive.

⁶⁶ PRT previously explained that "low income support is available to address affordability to a certain degree, these stop-gap measures can only be considered solutions in and of themselves in the context of a 90-plus percent telephone service penetration rate." *July 1999 Comments* at 3.

⁶⁷ See generally, *Underserved NPRM; Underserved Order*.

VI. PRT SHOULD RECEIVE UNIVERSAL SERVICE SUPPORT UNDER AN INTERIM INSULAR MECHANISM BASED ON EMBEDDED COSTS

The Commission in the *Remand Order* restated its intent to begin a comprehensive review of its high-cost support program in the near future – PRT seeks clarification of that intent.⁶⁸ Importantly, PRT does not seek to be excluded from, or carved out, of any policy changes emanating from that proceeding. Rather, a precondition to that comprehensive review must be the creation of a high-cost support program for insular carriers. The Act clearly requires support for rural, insular, *and* high-cost areas. It is premature to begin a comprehensive review until all required high-cost mechanisms are created.

Moreover, further delaying Puerto Rico’s receipt of high-cost funds is particularly problematic in light of ongoing intrastate reform efforts within Puerto Rico. In close conjunction with the Telecommunications Regulatory Board of Puerto Rico, PRT has been able to adopt a multi-year plan to begin the process of rebalancing rates, expanding local calling zones, adopting minor basic rate increases, and removing implicit subsidies from its rate structure. While these efforts are significant, they are also preliminary steps. PRT and Puerto Rico consumers need high-cost support to ensure that additional basic rate increases are not necessary, and to ensure that subsequent efforts within Puerto Rico are not thwarted by FCC inaction.⁶⁹

68 *Remand Order*, ¶ 107.

69 The Commission suggests that PRT is not entitled to relief because it “has offered no evidence that the decline in its intrastate high-cost support caused rate shock or rate comparability problems.” *Remand Order*, ¶ 139. PRT disagrees with the apparent principle behind such a standard. In order for Puerto Rico to receive high-cost funds it should never have been denied, PRT would need to increase rates, further limiting its ability to provide affordable service to an island with dangerously low penetration rates. This is high-risk behavior that leaves consumers and potential new customers to suffer the consequences of unaffordable rates until regulators correct the situation. Puerto Rico should not be forced to experience greater

Therefore, PRT requests that the FCC clarify that it will provide for insular areas prior to the Joint Board's comprehensive review. To that end, PRT suggests that the FCC adopt a non-rural insular mechanism, as an interim measure, based on actual costs, calculated using Part 36 of the Commission's rules. Treating PRT in a similar manner to rural carriers is logical because all other high-cost insular carriers are already provided for under the rural mechanism.

A non-rural insular mechanism would only restore high-cost support that is denied Puerto Rico under the general high-cost mechanism. PRT projects that it would receive approximately \$3.08 in monthly support per loop (approximately \$40 million annually) under a non-rural insular mechanism,⁷⁰ considerably less than the per-loop monthly support currently received under the rural mechanism by other insular areas as explained above. The modest size of the request further demonstrates the measured nature of the request, and its limited impact on the universal service fund.

drops in subscribership levels for the Commission to fully address and assess its request to implement a statutory mandate.

⁷⁰ This is comparable to the support Puerto Rico received in prior years. For example, from 1998-2000 PRT received an average of \$3.18 in monthly high-cost support per loop. *See* Industry Analysis Division, Common Carrier Bureau, State-by-State Telephone Revenues and Universal Service Data, Table 7, "High-Cost Loop (HCL) Support Program: 2000" (rel Apr. 2001) (\$3.35 monthly high-cost support per loop); Industry Analysis Division, Common Carrier Bureau, State-by-State Telephone Revenues and Universal Service Data, Table 1.11, "Projected Non-Rural Carriers High-cost support Payments Per Loop: 1999" (rel. Jan. 2000) (\$2.94 monthly high-cost support per loop); Industry Analysis Division, Common Carrier Bureau, State-by-State Telephone Revenues and Universal Service Data, Table 2, "Universal Service Fund (USF): 1998" (rel. Jan. 1999) (\$3.24 monthly high-cost support per loop).

VII. CONCLUSION

Based on the foregoing, PRT requests that the FCC reconsider and clarify its *Remand Order* and disposition of PRT's *Petition*. The Commission should grant this *Petition*, and in doing so adopt a specific non-rural insular support mechanism.

RESPECTFULLY SUBMITTED,

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January 14, 2004

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TOTAL PRT = 71.4%

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